

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**MISSOURI PRIMATE FOUNDATION,
et al.,**

**Plaintiffs and
Counterclaim Defendants,**

v.

**PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC., et al.,**

**Defendants and
Counterclaim Plaintiffs.**

Case No. 4:16-cv-02163

**COUNTERCLAIM PLAINTIFFS' MOTION FOR LEAVE TO FILE
SUPPLEMENTAL MEMORANDUM IN FURTHER SUPPORT OF
COUNTERCLAIM PLAINTIFFS' MOTION TO COMPEL INSPECTION,
OR, IN THE ALTERNATIVE, FOR ENTRY OF DEFAULT AGAINST
COUNTERCLAIM DEFENDANT SAWYER**

Counterclaim Plaintiffs People for the Ethical Treatment of Animals, Inc. and Angela Scott a/k/a Angela G. Cagnasso (together, "Plaintiffs") respectfully move this Court to grant them leave to file the [Proposed] Supplemental Memorandum in Further Support of Counterclaim Plaintiffs' Motion to Compel Inspection, Or, in the Alternative, for Entry of Default Against Counterclaim Defendant Sawyer ("Supplemental Memorandum") submitted herewith. In support of this motion, Plaintiffs state the following:

1. Plaintiffs' case against Counterclaim Defendant Andrew Sawyer ("Sawyer") centers around the issue of whether a chimpanzee named Joey, who is owned by Sawyer, presently is, and in the past has been, confined under conditions that violate the Endangered Species Act.

2. Because Sawyer removed Joey to a secret location and refused Plaintiffs' request

for an inspection of Joey's present conditions, Plaintiffs moved on June 18, 2018, for an order compelling Joey's inspection (the "Inspection Motion"). [ECF Nos. 83, 84, 86].

3. The Supplemental Memorandum is limited to a discussion of evidence and information that was unavailable at the time Plaintiffs briefed the Inspection Motion.

4. Local Rule 4.01 permits the filing of a motion, a response to a motion, and a reply in support of a motion and specifies that "[a]dditional memoranda may be filed by either party only with leave of Court." E.D. Mo. L.R. 4.01(C). "A party that wishes to file additional briefing after a reply must file a motion for leave of Court to do so, must explain in the motion for leave why additional briefing is necessary, and must submit the proposed additional briefing along with the motion for leave." *Davis v. Jomp*, No. 4:16-CV-229 CAS, 2017 WL 1407293, at *1 (E.D. Mo. Apr. 20, 2017).

5. Supplemental briefing for the Inspection Motion is necessary because Plaintiffs need to inform the Court that Sawyer refused to confirm at his deposition that his attorney's filing of the opposition to the Inspection Motion [ECF No. 85] and statements contained therein, were authorized by Sawyer, or that they truthfully represent Sawyer's personal views. *See* Supplemental Memorandum at II.A.

6. At issue in the Inspection Motion is whether Sawyer has validly asserted a privilege that is personal to him. The claim of this personal privilege is fundamentally incompatible with Sawyer's refusal at his deposition to own up to any of the statements made in Document No. 85. Indeed, Sawyer's counsel insisted at the deposition that Sawyer made no representations to the Court at all—and perhaps did not even understand what was stated in Document No. 85.

7. In addition, at his deposition, Sawyer invoked the Fifth Amendment privilege in

response to each question eliciting substantive information about the conditions and whereabouts of Joey, and he refused to identify any witnesses, documents, or other evidence relating to the merits of this case. *See* Supplemental Memorandum at II.B. This contradicts the assertion by Sawyer’s counsel in Document No. 85 that “alternative” means exist for Plaintiffs to take discovery about the treatment and circumstances in which Joey is presently held.

8. Accordingly, good cause exists to grant Plaintiffs’ request for leave to present this after-acquired information regarding Sawyer’s deposition testimony, because that information is both highly relevant and it will assist the Court in determining the merits of the pending Inspection Motion. *See, e.g., United States v. Reed*, No. 4:12 CR 59 CDP, 2012 WL 4343406, at *1 (E.D. Mo. Sept. 24, 2012), *aff’d*, 545 F. App’x 579 (8th Cir. 2013) (granting leave to file a supplemental memorandum after a hearing “following receipt of the transcript”); *Kinder v. Geithner*, No. 1:10 CV 101 RWS, 2011 WL 1576721, at *2 (E.D. Mo. Apr. 26, 2011), *aff’d*, 695 F.3d 772 (8th Cir. 2012) (granting motion to file a supplemental memorandum where, subsequent to initial briefing, an additional development “squarely impact[ed]” the issues raised by the pending motion and provided “an additional basis” to rule on the pending motion); *Johnson v. Midcoast Aviation*, No. 4:06-CV-1805(CEJ), 2008 WL 3200801, at *4 (E.D. Mo. Aug. 6, 2008) (providing “leave of Court to subsequently file a supplemental memorandum . . . based on the after-acquired evidence doctrine”).

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order, in the form submitted herewith, **GRANTING** Plaintiffs leave to file the [Proposed] Supplemental Memorandum in Further Support of Counterclaim Plaintiffs’ Motion to Compel Inspection, Or, in the Alternative, for Entry of Default Against Counterclaim Defendant Sawyer, and

MOREOVER ORDERING that the [Proposed] Supplemental Memorandum submitted herewith is deemed properly filed as of the date of the Order.

Dated: August 17, 2018

Respectfully submitted,

/s/ Martina Bernstein
MARTINA BERNSTEIN (#230505CA)
PETA Foundation
1536 16th St. NW
Washington, DC 20036
202.483.7382
Fax No: 202.540.2208
martinab@petaf.org

JARED S. GOODMAN (#1011876DC)
(Admitted *pro hac vice*)
PETA Foundation
2154 W. Sunset Blvd.
Los Angeles, CA 90032
323.210.2266
Fax No: 213.484.1648
jaredg@petaf.org

POLSINELLI PC
JAMES P. MARTIN (#50170)
KELLY J. MUENSTERMAN (#66968)
100 S. Fourth Street, Suite 1000
St. Louis, MO 63102
314.889.8000
Fax No: 314.231.1776
jmartin@polsinelli.com

*Attorneys for Defendants/
Counterclaim Plaintiffs*

CERTIFICATE OF SERVICE

I certify that on August 17, 2018, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, by which notification of such filing was electronically sent and served to the following:

Brian Klar, bklar@lawsaintlouis.com
Daniel T. Batten, dbatten@lawsaintlouis.com
Attorneys for Plaintiff/Counterclaim Defendant Connie Braun Casey

Geordie Duckler, geordied@animallawpractice.com
Attorney for Plaintiff/Counterclaim Defendant Andrew Sawyer

Patrick Hanley, p.hanley@att.net
Attorney for Plaintiff/Counterclaim Defendant Vito Stramaeglia

And was served by regular mail on the following:

Missouri Primate Foundation
c/o Connie Braun Casey
12338 State Rd. CC
Festus, MO 63028

/s/ Jared S. Goodman